

Exhibit 39

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.

Civil Action No. 07-10248-PBS

Exhibit to the August 28, 2009 Declaration of James J. Fauci In Opposition To
Corrected Boehringer Ingelheim Corporation and Boehringer Ingelheim Pharmaceuticals, Inc.
Local Rule 56.1 Statement of Undisputed Material Facts
in Support of Their Motion For Summary Judgment

Coval, Paul J.

From: LOXLEY, RHODA ROXUS [ROXUS/ROXUS1/LOXLEY]
Sent: Wednesday, August 28, 1996 8:08 AM
To: NICHOLS, GARY MK BIPUS; TUPA, EDWARD ROXUS; Marketing
 Managers/Select
Cc: POWERS, JOHN ROXUS; Contracts
Subject: August Business Review

Business Overview

On August 2 and 5 presentations were made for both UHC and Premier Pharmacy Program executives to gain support for Viramune formulary acceptance. Both groups started the process to distribute product information through monograph processes. No price concessions beyond wholesale prices were offered.

Owen Healthcare remains the lone targeted GPO who has not signed our Ipratropium Bromide agreement. Citing their agreement with Dey, Owen has chosen to wait until Dey releases their product before switching from BI Atrovent. Owen has, however, informed their members that they may "go off" contract to purchase Roxane's IB. No price challenges from Dey have been received.

We are currently developing a response for Kaiser regarding Ipratropium. Ken Gross and I have discussed two options as our response due September 6. The first option is for both Roxane and BI to offer two prices for the products. Roxane would offer the standard \$25 price as a stand alone, but a better price if Kaiser awards Roxane the IB UDV and BI the Atrovent MDI. BI would offer a similar package bundling the MDI price with the Roxane bid. Bruce Banks has been asked to comment regarding legalities. The second option involves a sales increase incentive program shared by both Roxane and BI.

Late last week it was announced that the New Jersey Hospital Association (NJHA) has signed an agreement with a VHA affiliate to access their pharmacy agreement. Under the agreement, NJHA members will utilize the national pharmacy program of HealthCare Purchasing Partners, Inc. (HPPI) beginning in September 1996. This affiliation will add 114 member hospitals from the NJ and Metropolitan NYC market to this primarily Midwestern Market Group. VHA and its affiliate HPPI rank in the Top 5 GPO's for Roxane.

In a related agreement, Amerinet has added the membership of the Metropolitan Chicago Hospital Association to their programs. MCHA's 135 members began to use Amerinet agreements on August 1. It is clear that regional groups cannot match the negotiating power for pharmacy items that national groups command. This additional consolidation further illustrates the need for well crafted and innovative offers for National GPO's.

John Powers